UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ERIC H. TALBERT, on behalf of himself and all other similarly situated persons	:	
	:	COMPLAINT- CLASS ACTION
Plaintiff,	:	
	:	NO.
vs.	:	
AMERICAN WATER WORKS COMPANY, INC., PENNSYLVANIA-AMERICAN WATER COMPANY and NEW JERSEY AMERICAN WATER	:	
Defendants.	:	

COMPLAINT- CLASS ACTION

INTRODUCTION

Plaintiff Eric Talbert brings this action on behalf of himself and all similarly situated homeowners to secure redress because the water Defendants provide to his house contains contaminants they have failed to disclose in the water quality reports for his water distribution system despite claiming in those reports to have disclosed "all contaminants" and "exactly" what his water contains.

Plaintiff also brings this action on behalf of himself and all similarly situated homeowners to secure redress because Defendants partially flooded his house with water and sediment on October 25, 2017 when they negligently flushed the water distribution system providing his tap water and never showed up to clean it up.

The following allegations are based upon Plaintiff's personal knowledge, independent laboratory results and upon information and belief as to all other matters. Plaintiff avers as follows:

PARTIES

1. Plaintiff Eric H. Talbert ("Plaintiff") is an adult individual residing on Red Fox Circle in Kimberton, Pennsylvania. Plaintiff's home is located at the end of a cul-de-sac. Plaintiff is a customer of Defendant Pennsylvania-American Water Company.

2. Defendant Pennsylvania-American Water Company ("PA American Water") is incorporated in Pennsylvania with its principal place of business located at 800 W. Hershey Park Drive, Hershey, PA 17033.

3. Defendant American Water Works Company, Inc. ("American Water;" Defendants will also be collectively referred to herein as "American Water" depending on context) is incorporated in Delaware with its principal place of business located at 1 Water Street, Camden, NJ 08102.

4. Defendant New Jersey American Water ("New Jersey American Water") is incorporated in Delaware with its principal place of business located at 1 Water Street, Camden, NJ 08102.

VENUE AND JURISDICTION

5. This Court has jurisdiction pursuant to 28 U.S. Code §1332(d) because minimal diversity exists between the parties, the proposed classes have hundreds or thousands of members in each class defined herein, and each class has collectively incurred more than $5 million in damages.

6. Venue and personal jurisdiction in this District are proper because:

a. At all relevant times Plaintiff resided in this District and was provided services by PA American Water in this District.

b. Defendants routinely do business throughout the United States including in this District via U.S. mail, telephone, and the internet.

BACKGROUND FACTS: WATER QUALITY

7. The Form 10-K filed as of December 31, 2017 by the holding company, American Water Works Company Inc., states;

> American Water is the largest and most geographically diverse, publicly-traded water and wastewater utility company in the United States, as measured by both operating revenues and population served. A holding company originally incorporated in Delaware in 1936, we employ approximately 6,900 professionals who provide drinking water, wastewater and other related services to an estimated 15 million people in 46 states, the District of Columbia and Ontario, Canada. The largest component of the Company's business includes rate regulated subsidiaries that provide water and wastewater services, collectively presented as our 'Regulated Businesses.' We conduct the majority of our business through the Regulated Businesses segment.

8. Federal law requires operators of water distribution systems to annually publish water quality reports for each system they operate. American Water customers can read the water quality reports for their water distribution systems on the American Water website.

9. Plaintiff's home is provided drinking and bathing water by the system entitled "Royersford/Home Water" ("Royersford") on American Water's website (public water supply ID# PA1150166). The American Water website has on it a water quality report covering 2018 for Royersford (the "2018 Royersford Water Quality Report").

10. The 2018 Royersford Water Quality Report states;

> For your information, we have compiled a list in the table below showing what substances were detected in your drinking water during 2018. The Pennsylvania DEP [Department of Environmental Protection] allows us to monitor for some contaminants less than once per year because the concentration of the contaminants does not change frequently. Some of our data, though representative, are more than one year old. Although all of the substances listed

> below are under the Maximum Contaminant Levels (MCL) set by the U.S. Environmental Protection Agency and the Pennsylvania DEP, we feel it is important that you know exactly what was detected and how much of each substance was present in the water.

11. The National Primary Drinking Water Regulations ("NPDWR") are published by the U.S. Environmental Protection Agency ("EPA"); they are legally enforceable primary standards and treatment techniques that apply to public water systems. Contaminants are any physical, chemical, biological or radiological substances or matter in water. The NPDWR standards public water systems must meet are called Maximum Contaminant Levels or MCLs. The EPA also publishes standards called Maximum Contaminant Level Goals ("MCLGs") that it recommends water system operators comply with but does not enforce.

12. The definitions of MCL and MCLG provided by the EPA are included in every water quality report American Water issues. The 2018 Royersford Water Quality Report includes the government's definitions for MCL and MCLG:

> Maximum Contaminant Level ('MCL'): The highest level of a contaminant that is allowed in drinking water. MCLs are set as close to the MCLGs as feasible using the best available treatment technology.
>
> Maximum Contaminant Level Goal ('MCLG'): The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.

13. The 2018 Royersford Water Quality Report shows an average for each contaminant listed as well as the highest and lowest level detected of that contaminant in the various samples taken. The MCL and MCLG is shown for each regulated contaminant disclosed in the report.

THE WATER DEFENDANTS PROVIDE PLAINTIFF HAS MORE CONTAMINANTS IN IT THAN WHAT THEY DISCLOSE IN WATER QUALITY REPORTS

14. The October 2017 partial flooding of Plaintiff's house during or after a flushing of the water distribution system PA American Water services his house by prompted Plaintiff to have his drinking water tested shortly after the next flushing. Approximately one week after PA American Water flushed his water distribution system in April of 2018, samples of the water provided to his home were collected and submitted to an independent lab for testing (the "April Test Results").

15. The April Test Results described the level of tetrachloroethylene[1] in Plaintiff's water from his kitchen faucet to be "**VERY HIGH.**" The April Test Results found the level of tetrachloroethylene in Plaintiff's tap water to be .002 parts per million ("ppm") which is the equivalent of two (2) parts per billion ("ppb"). The EPA has set the MCL for tetrachloroethylene at five (5) ppb and the MCLG at zero.

16. Despite claiming to be providing customers with; "a list in the table below showing what substances were detected in your drinking water during 2018" and stating "we feel it is important that you know exactly what was detected and how much of each substance was present in the water,"[2] the 2018 Royersford Water Quality Report does not list tetrachloroethylene among the contaminants found in the water distribution system serving Plaintiff's house.

17. Tetrachloroethylene in drinking water can cause liver problems and increases the risk of cancer. It is a volatile organic chemical ("VOC") widely used for dry cleaning of fabrics, hence

[1] Tetrachloroethylene ("PCE") is a chlorocarbon with the formula $Cl_2C=CCl_2$. It is also known under the systematic name tetrachloroethene, or perchloroethylene ("PERC").

[2] Other American Water subsidiaries state in their water quality reports that they are disclosing "exactly" what was their respective customers' water systems during the prior calendar year. *See*, *e.g.*, Tennessee American 2017 Water Quality Report for Sequatchie Valley (PWS ID # TN0000749), p. 5 ("we feel it is important that you know exactly what was detected and how much of the substance was present in the water."); p. 5 ("For your information, we have compiled a list in the table, showing what substances were detected in your drinking water during 2017.").

it is sometimes called "dry-cleaning fluid." Tetrachloroethylene is also used in the textile industry or to degrease metal parts in metalworking industries.

18. The EPA considers tetrachloroethylene likely to be carcinogenic to humans by all routes of exposure. Like many chlorinated hydrocarbons, tetrachloroethylene is a central nervous system depressant which can enter the body through respiratory or dermal exposure. Tetrachloroethylene dissolves fats from the skin, potentially resulting in skin irritation. The International Agency for Research on Cancer considers tetrachloroethylene probably carcinogenic to humans. Studies in humans suggest exposure to tetrachloroethylene might lead to a higher risk of getting bladder cancer, multiple myeloma, or non-Hodgkin's lymphoma, and it may cause dizziness or drowsiness, headache, and incoordination. Exposure for longer periods to low levels of tetrachloroethylene may cause changes in mood, memory, attention, reaction time, and vision.

19. Tetrachloroethylene in water provided to residential homes typically comes from "backflow" from dry cleaning operations and/or factories located on the same water distribution system. There are a number of dry cleaners located a few miles away from Plaintiff's house that potentially are on the same water distribution system as Plaintiff. Defendants knew or should have known the water provided to Plaintiff's house in 2018 was at times contaminated with tetrachloroethylene from backflow or some other source.

20. On or about May 16, 2012, the NEW YORK TIMES ran an article in a series entitled: *Toxic Waters: A series about the worsening pollution in American waters and regulators' response*. (the "*Toxic Waters*" article). The May 16th NEW YORK TIMES edition of *Toxic Waters* covered contaminants found in public water supply ID# PA1150166 (the Royersford system). According to the NEW YORK TIMES, samples taken from the Royersford system that were reviewed by the

Environmental Working Group tested positive for tetrachloroethylene in early 2009. How did the tetrachloroethylene enter the Royersford system back in 2009? Was it due to backflow created by an earlier negligent flushing?

21. Another possible reason tetrachloroethylene is detected at times in the Royersford system is PA American Water may have installed vinyl-lined asbestos cement pipe or vinyl-lined water mains in the Royersford system. Vinyl-lined equipment and pipes are coated with tetrachloroethylene which leaches into the water system. Operators of systems with vinyl in them have to test frequently for such leaching. Southborough, Massachusetts notes in a water quality report that the Massachusetts Department of Environmental Protection requires Southborough to sample water from three locations each year for tetrachloroethylene due to the town's water distribution system including vinyl-lined asbestos cement pipe.

BACKGROUND FACTS: CROSS CONNECTIONS & BACKFLOW

22. State regulations require commercial and industrial customers served by a public water system to protect it from potential contamination. "Backflow" is one source of contamination- it refers to instances where water from private plumbing flows into a public water distribution system. Customers are required to install and maintain backflow prevention devices on the main water service lines in order to prevent potential backflow.

23. There are two types of backflow: backpressure and backsiphonage. Backpressure happens when the pressure of the contaminant source exceeds the positive pressure in the water distribution main. An example would be when a backflow preventer on a hot water boiler heater malfunctions. If that happens and the pressure increases in the boiler system to where it exceeds the pressure in the water distribution system, backflow of water that was in the hot water boiler enters into the public drinking water supply system.

24. Backsiphonage is caused by a negative pressure in the water distribution system that creates a vacuum or partial vacuum similar in effect to sipping water through a straw. Negative pressure occurs in a drinking water distribution system during a water main break or when a hydrant is used.

25. Backflow has the potential to create health hazards if contaminated water enters the water supply plumbing system and is used for drinking, cooking or bathing. A "cross connection" is any physical connection between a potable water supply and any source of non-potable liquid, solid or gas that could contaminate drinking water via backflow. Each American Water subsidiary operating water distribution systems has a Cross Connection Department which investigates backflow incidents. American Water's website notes water service can be disconnected if a customer ignores repeated requests to fix a cross-connection problem.

THE WATER PROVIDED TO PLAINTIFF'S HOME HAS MORE CONTAMINANTS IN IT THAN WHAT IS DISCLOSED IN THE ROYERSFORD WATER QUALITY REPORT

26. The April Test Results also revealed elevated levels of nickel in Plaintiff's tap water. The independent lab noted nickel is a possible carcinogen; nickel in low doses can lead to decreased lung function and allergic reaction. About 16-20% of the U.S. population is sensitive to nickel. Nickel is a naturally occurring element found in the earth's bedrock as well as the waste water from mining and smelting operations. The recommended level of nickel should not exceed 0.012 ppm in any drinking water according to the independent lab; the April Test Results found the level in Plaintiff's tap water to be 0.013 ppm. There is presently no MCL or MCLG for nickel.

27. On American Water's website, water quality reports for each water distribution system are accompanied by a document entitled "Typical Water Quality Information" which provides the results of testing for contaminants that appear on the National Secondary Drinking Water

Regulation (aluminum and fluoride are examples of contaminants on this list). The EPA recommends water systems meet its Secondary Drinking Water Regulations but does not require they do so.

28. American Water publishes the Typical Water Quality Information every January for the Royersford system. In the Typical Water Quality Information published in January of 2019, PA American Water stated iron ranged from 0 to .14 mg/L (or ppm) in the Royersford system. PA American Water qualified its iron readings by noting that the results represented; "the normal range present on the water leaving our water treatment plant."

29. The National Secondary Drinking Water Regulations call for iron to be kept below .3 mg/L. In the two tests of Plaintiff's drinking water in 2018 by an independent laboratory, his tap water contained .32 mg/L of iron in the April Test Results and .267 mg/L when tested in August of 2018. American Water knows or should have known samples taken from Plaintiff's water distribution system away from the treatment center in 2018 detected an iron content that is two or three times higher than the amount of iron reported in the Typical Water Quality Information. PA American Water only tells its Royersford customers how much iron is in their water coming out of the treatment plants because PA American Water does not want to publicly disclose that the level of iron that actually comes out of customers' faucets is close to or above the threshold stated in the National Secondary Drinking Water Regulations.

WATER QUALITY REPORTS PUBLISHED BY AMERICAN WATER DECEIVE ITS CUSTOMERS INTO BELIEVING ALL DETECTED CONTAMINANTS ARE BEING DISCLOSED

30. In addition to falsely telling American Water customers that their respective water quality reports contain; "a list ... showing what substances were detected in your drinking water during

2018," American Water deceives readers in other ways into believing the water quality reports it publishes list all contaminants contained within their water.

31. One of the ways American Water deceives its customers into thinking it is informing them about "exactly" what is in their water is by including data in their water quality reports for unregulated contaminants. For example, the 2018 Royersford Water Quality Report states; "Non-regulated substances are measured, but maximum allowed contaminant levels have not been established by the government. These contaminants are shown for your information."

32. The 2018 Royersford Water Quality Report reveals Tritium was detected in Plaintiff's tap water in 2018. The EPA has not set a MCL or MCLG for Tritium in the NPDWA.

33. The 2018 Royersford Water Quality Report reveals "Total Perfluorinated Compounds (ppt)" were detected in Plaintiff's tap water in 2018. The EPA has not yet set standards for Total Perfluorinated Compounds. In the box in the report where the MCL and MCLG is normally provided, PA American Water wrote "not regulated" for Total Perfluorinated Compounds. The disclosure that Tritium and Total Perfluorinated Compounds were detected in Plaintiff's tap water gave Royersford system customers the false impression that PA American Water was truly disclosing all contaminants it found in the Royersford water distribution system in 2018 because it had disclosed even those that were "not regulated" by the government. PA American Water volunteered this data solely "for your information."

34. When the 2018 Royersford Water Quality Report states; "we have compiled a list in the table below showing what substances were detected in your drinking water during 2018" it misleads customers because other than disclosing what the levels of lead or copper were within the water distribution system (and some disinfectants and disinfectant byproducts), what is being reported in water quality reports written by American Water is only what is in the water when it

left a treatment plant. After American Water states in its water quality reports that it will be disclosing; "what substances were detected in your drinking water," American Water provides data on regulated and unregulated contaminants based only upon samples taken from water coming out of its treatment facilities. Reporting only what comes out of water treatment facilities is not the same as telling customers "exactly" what is in their water when American Water knew or should have known there were additional contaminants within a water distribution system.

35. American Water does attempt to qualify what data is being presented in its water quality reports later on in the reports. At the top of each set of boxes listing data for contaminants, disinfectants and/or disinfection byproducts in the Royersford Water Quality Report, it states whether the data came from water samples taken "in the Distribution System" or "Leaving the Treatment Facility." American Water provides the results in its water quality reports for disinfectants, disinfection byproducts, lead and copper sampled "in the Distribution System," but for all other regulated and unregulated contaminants, it only discloses those that show up in samples taken from treated water "Leaving the Treatment Facility."

36. According to the independent water testing on Plaintiff's tap water, there are a number of contaminants, including tetrachloroethylene and nickel, that PA American Water did not disclose in the water quality report prepared for Plaintiff's water distribution system for 2018. Since PA American Water did not disclose all contaminants known to have been circulating in the water distribution system from which Plaintiff got his drinking water in 2018, it falsely stated in the 2018 Royersford Water Quality Report that it was disclosing therein; "exactly what was detected and how much of each substance was present in [your] water."

37. PA American Water only reports iron measurements taken from samples of water leaving its treatment plants because it knows iron measurements within the Royersford system come close to or exceed the EPA's recommended maximum iron content. It is deceptive for PA American Water to state it was going to disclose "exactly what was detected and how much of each substance was present in [your] water" only to then limit the results it reports for some contaminants by only including samples taken from water leaving a treatment facility when it knows the water actually delivered to customers has a much higher iron content.

38. PA American Water knew or should have known there were contaminants in Plaintiff's tap water, including tetrachloroethylene and nickel, that it made no mention of in the 2018 Royersford Water Quality Report. Other than lead, copper, disinfectants and disinfectant byproducts, American Water has its subsidiaries exclude information about what contaminants are being added to the water during the time it travels from the treatment facility to American Water customers' homes for bathing, drinking and cooking. Doing so allows its subsidiaries to ignore thorny disclosures in their water quality reports (and to regulators) about, for example, where the tetrachloroethylene circulating in the Royersford System came from and how long was it in there. Upon information and belief, a negligent flushing of Plaintiff's water distribution system in April of 2018 caused tetrachloroethylene to enter his drinking water via backflow.

39. PA American Water samples water for regulated and unregulated contaminants in other places besides when it is "Leaving the Treatment Facility." For one thing, it has to sample the water in each water distribution system to monitor backflow and look out for cross connections.

40. A press release entitled "New Jersey American Water Wants Customers to Know Their Water is Safe to Drink," was issued on August 13, 2019. New Jersey American Water stated in its August 13th press release;

> 'New Jersey American Water routinely tests and monitors the drinking water leaving the treatment facilities and at different distribution points through the system ... and test results show our water meets or surpasses both state and federal standards for all regulated substances, including lead,' explained Cheryl Norton, president of New Jersey American Water.

41. Similarly, in a press release issued on October 10, 2019 entitled "New Jersey American Water Completes Required Lead and Copper Sampling and Verifies its Systems are Compliant," New Jersey American Water stated;

> 'New Jersey American Water routinely tests and monitors the drinking water leaving the treatment facilities and at different distribution points through the system – and we provide corrosion control treatment where needed – and these specific lead and copper testing results show both our investment in infrastructure and our treatment processes are working,' said Cheryl Norton, president of New Jersey American Water. 'While these results will be included in our annual Water Quality Reports in June, we wanted to share this news with our customers now so they can feel confident that their water is safe to drink.'

42. If New Jersey American Water "routinely tests and monitors the drinking water leaving the treatment facilities and at different distribution points through the system..." then surely PA American also; "routinely tests and monitors the drinking water ... at different distribution points through[out] the system...."

43. New Jersey American Water knew or should have known there were contaminants in tap water sold to customers that it makes no mention of in the water quality reports it publishes. Just as PA American Water, New Jersey American Water states in its water quality reports it is disclosing all contaminants; "Once again, we proudly present our annual water quality report, which details the results of water quality testing completed from January to December 2018." *See, e.g.*, 2018 Raritan System (PWS ID: NJ2004002) Water Quality Report, p. 2; 2018 Short Hills System (PWS ID: NJ0712001) Water Quality Report, p. 2 (same); 2017 Frenchtown System (PWS ID: NJ1011001) Water Quality Report, p. 1 (same sentence for 2017).

44. Water quality reports published by New Jersey American Water also state; "Included in this report are details about where your water comes from, what it contains, and how our water quality results compare to federal and state standards." *See, e.g,* 2018 Raritan System Water Quality Report, p. 2; 2018 Short Hills System Water Quality Report, p. 2 (same); 2017 Frenchtown System Water Quality Report, p. 1 (same). New Jersey American Water does not qualify these statements in any way but then, just like PA American Water, only presents data in its water quality reports on regulated and/or unregulated contaminants found in the water coming out of its treatment plants. Stating that it would disclose "what [the drinking water] contains," New Jersey American became obligated to disclose all known contaminants in each water system it operated for which it made this statement in a water quality report. Stating that it would disclose "what [the drinking water] contains" is no different than PA American Water promising in the 2018 Royersford Water Quality Report; "that [Royersford system customers will] know exactly what was detected and how much of each substance was present in the water."

45. New Jersey American Water attempts to provide cover for the deceptive practice of stating in the beginning of its water quality reports that it will disclose all contaminants it found in each water distribution system i.e., "what it contains," by burying in a paragraph several pages later a sentence that states; "Those substances not listed in the table were not found in the treated water supply." *See, e.g.*, 2018 Short Hills System Water Quality Report, p. 6; 2017 Frenchtown System Water Quality Report, p. 4; 2018 Western System (PWS ID: NJ0327001) Water Quality Report, p. 6. Including this sentence, in the view of American Water, allows for New Jersey American Water to only report in its water quality reports contaminants found in samples of water leaving its treatment facilities. New Jersey American Water ignores what it promised to

deliver in its water quality reports and the capabilities it disclosed in press releases to limit the number of contaminants it discloses in water quality reports.

NEGLIGENTLY MAINTAINED OR OPERATED WATER DISTRIBUTION SYSTEMS CREATE PROBLEMS FOR CERTAIN CUSTOMERS LOCATED IN CUL-DE-SACS

46. The water distribution system that provides Plaintiff drinking water is negligently maintained or operated by PA American Water. PA American Water flushes water distribution systems to remove sediment from the system. During or immediately after flushing the Royersford system on October 25, 2017, Plaintiff's first floor toilets spewed out sediment and water with such force that sediment was hitting the walls and water covered the bathroom floors. The water found a crack in the tile in one bathroom and flooded down into the ceiling of the basement and garage while Plaintiff was on the phone with PA American Water. PA American Water knows it damaged Plaintiff's house during or after the October 25, 2017 flushing but, to date, has elected to not compensate class members like him for damage done when a water system American Water operates is negligently flushed.

47. Plaintiff lives at the end of a cul-de-sac. Upon information and belief, his house is provided water via a dead-end main in the Royersford water distribution system. "Dead-end mains" are water mains over fifty feet long which were not designed at the time of installation to be fed from both ends. Dead-end mains, typically in cul-de-sacs, at the end of rural streets, or even in looped lines, are known problem areas for water stagnation, resulting in quality complaints. *See* Water Online, “End Of The Line: Solutions For Water Main Dead Ends." Water stagnation leads to sediment accumulation.

48. Plaintiff had one or more phone calls on or after October 25, 2017 with PA American Water about the water and sediment in his house. Plaintiff was contacted by a claims person affiliated with PA American Water, one of its agents or insurers about the incident some time after October 25th but PA American Water never provided compensation or a clean-up crew. At the bottom of billing invoices American Water customers receive it states; "We spend all of our time looking after your water. So that you can enjoy life's most precious resource without giving it a second thought. WE ARE PENNSYLVANIA AMERICAN WATER. WE KEEP LIFE FLOWING."

49. On or about April 12, 2018, Plaintiff ran into PA American Water employees at the bottom of his driveway because that is where PA American Water attaches hoses to hydrants or other openings to flush the system. When Plaintiff complained about what PA American Water had done to his house, PA American Water workers said to him; "we all know about your house." PA American Water workers told him his home was located "at the end of the line" in the water distribution system making it susceptible to problems like what happened during or after the October 25, 2017 flushing. One PA American Water worker confided to Plaintiff that day he would have better success getting American Water to do something about his problem if he were to contact the Pennsylvania Public Utility Commission.

50. There are solutions which would reduce or eliminate what happened to Plaintiff's house on October 25, 2017 but Defendants are unwilling to pay for these improvements due to their cost.

VIOLATIONS COMPLAINED OF

FIRST CAUSE OF ACTION
NEW JERSEY CONSUMER FRAUD ACT
WATER QUALITY

51. Plaintiff incorporates herein paragraphs 1-50.

52. The New Jersey Consumer Fraud Act, N.J.S.A. §§ 56:8-1 – 56:8-184 (the "Consumer Fraud Act" or the "NJCFA"), renders it unlawful for any person to "use or employ[] . . . any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation," or to "knowing[ly] conceal[], suppress[], or omi[t] . . . any material fact with intent that others rely upon . . . [that] concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby . . . ." NJCFA § 2, N.J.S.A. § 56:8-2. To maintain a claim under the Consumer Fraud Act, a private litigant must establish "(1) unlawful conduct by the defendants, (2) an ascertainable loss on the part of the plaintiff, and (3) a causal relationship between the defendant's unlawful conduct and the plaintiff's ascertainable loss." *New Jersey Citizen Action v. Schering-Plough Corp.*, 842 A.2d 174, 367 N.J. Super. 8, 12-13 (N.J. App. Div. 2003).

53. American Water is a public company headquartered in New Jersey so New Jersey's Consumer Fraud Act should be the law applied to its actions if they were misleading or deceptive.

54. By not disclosing some of the contaminants American Water customers were being exposed to while promising to disclose all contaminants in its annual water quality reports, American Water deceives customers into thinking they are drinking better quality water than what they really are. It is fraud to state reports list all contaminants each water distribution system contains and then not disclose some contaminants in those reports because they were

found within the water distribution system itself rather than in the freshly treated water that comes out of its treatment facilities. What contaminants are in the water people use from their faucets is material information to them in making choices about everything from where to live to whether to purchase water filters and, if so, which ones, or taking other measures to ensure the water coming out of the faucets is safe to use.

55. The Defendants made misrepresentations to deceive American Water customers into thinking the water they were drinking was of a better quality than it actually was. It is fraud to state water quality reports will disclose; "exactly what was detected and how much of each substance was present in the water" and then not disclose some contaminants in those reports because they were found in the water distribution system itself rather than in the freshly treated water coming out of its treatment facilities. It is fraud to state water quality reports will disclose; "details about where your water comes from, what it contains..." and then not disclose some contaminants in those reports because they were found within the water distribution system itself rather than in the freshly treated water that comes out of its treatment facilities.

56. Stating; "[t]hose substances not listed in the table were not found in the treated water supply[]" is New Jersey American Water's deceptive way of backtracking from its promise to disclose every contaminant in the beginning of its water quality reports. Including this sentence, in the view of American Water, allows for New Jersey American Water to report in its water quality reports only the contaminants found by sampling water leaving its treatment facilities. New Jersey American Water ignores what it promised to deliver in the beginning of its water quality reports and the system-wide sampling it disclosed in press releases to minimize the number of contaminants it actually discloses in water quality reports. That is a deceptive practice.

57. Plaintiff and class members are consumers under the NJCFA who were deceived by American Water stating in water quality reports; "For your information, we have compiled a list in the table below showing what substances were detected in your drinking water during 2018" when the table did not in fact list all contaminants in the water. To avoid this deceptiveness, American Water would have to write in its water quality reports that it was providing its customers; "a list ... showing what substances were detected in your drinking water [at the time it left the treatment facility] during 2018 [but we are not going to share any data about contaminants that got into your water, other than copper and lead, while it was within the water distribution system just prior to coming out of your faucet]."

58. Plaintiff and class members suffered ascertainable loss because they did not receive the benefit of the bargain for the services they paid American Water to perform. The NJCFA should be applied because the similarity of the wording of water quality reports issued by various subsidiaries of American Water evidences, at a minimum, coordination between American Water subsidiaries on the wording of and information contained in their water quality reports.

59. Water quality reports written by American Water also deceive its customers as to how "safe" their tap water is by implying it is meeting the MCLG standards recommended by the EPA when the reports reveal it is only meeting the MCLs imposed by the EPA.

60. For example, the 2017 and 2018 Royersford Water Quality Reports correctly define MCLG (Maximum Contaminant Level Goal) as: "The level of a contaminant in drinking water below which there is no known or expected risk to health" and yet in the same reports American Water touts that; "Pennsylvania American Water's treatment processes are designed to reduce any such substances [contained in drinking water] to levels well below any health concern...." *See* 2017 Royersford Water Quality Report, p. 4. However, the water quality reports for

Royersford covering 2016, 2017 and 2018 show it met, for example, the MCL for uranium and arsenic but certainly not the MCLG. American Water would have to meet the MCLG for each contaminant in order to truthfully state in a water quality report that its treatment facilities were/are treating water to a purity; "below which there is no known or expected risk to health."

61. There is a big difference between meeting the MCL and the MCLG and American Water is not "reduc[ing] any such substances [contained in drinking water] to levels well below any health concern..." by only meeting the MCL. American Water knows this but chooses to deceive customers who read these water quality reports into believing the drinking water being provided to their households by Defendants is of better quality than it is by implying in their water quality reports they are meeting the MCLG levels for contaminants such as arsenic and uranium when they are not.

62. American Water at times describes the tap water it delivers to its customers as being "safe" even though that would require complying with the MCLG for each contaminant found in their water. American Water's October 10, 2019 press release misleads its customers into believing their water "is safe to drink" when it comes out of the faucets in their houses' by stating in the press release; "'While these results will be included in our annual Water Quality Reports in June, we wanted to share this news with our customers now so they can feel confident that their water is safe to drink.'"

63. The EPA identified the first ten chemicals it will send through the risk review process outlined in the amended Toxic Substances Control Act ("TSCA") on November 29, 2016. The first ten chemicals that will go through the risk review process are:

- 1,4-Dioxane
- 1-Bromopropane
- Asbestos
- Carbon Tetrachloride

- Cyclic Aliphatic Bromide Cluster
- Methylene Chloride
- N-methylpyrrolidone
- Pigment Violet 29
- Tetrachloroethylene, also known as perchloroethylene
- Trichloroethylene

Publication of the list in the Federal Register in late 2016 triggered the three-year statutory deadline for the EPA to determine whether any of these chemicals present an unreasonable risk to humans and the environment. If the EPA determines there is an unreasonable risk it has one year to publish and another year to finalize a rule that would address the identified risks.

64. As the water/sewer industry awaits the results due in December of 2019 of the EPA's risk review process for the first ten chemicals under the TSCA to see if the MCL for tetrachloroethylene is going to be lowered, American Water should not be touting how "safe" water it delivers that contains tetrachloroethylene is.

65. The Environmental Working Group updated its Tap Water Database in October of 2019 which collects data from nearly 50,000 local utilities in 50 states. The accompanying article on its website entitled; "The Dirty Secret of Government Drinking Water Standards" declares the regulatory system meant to ensure the safety of America's drinking water broken. The Environmental Working Group notes the EPA has not added any new contaminants to the toxic chemicals covered by the Safe Drinking Water Act in almost 20 years and there still are no legal limits for more than 160 unregulated contaminants in U.S. tap water. For some other chemicals, the EPA's MCLs have not been updated in almost 50 years.

66. *The Dirty Secret of Government Drinking Water Standards* article states scientists working for the Environmental Working Group reviewed the latest independent research to

arrive at truly safe standards for contaminants in drinking water. *The Dirty Secret of Government Drinking Water Standards* article states;

> Because here's the dirty secret about government drinking water standards: Legal doesn't necessarily mean safe.
>
> The vast majority of the nation's drinking water supplies get a passing grade from federal and state regulatory agencies. But many of the 278 contaminants detected by local utilities' tests are found at levels that may be legal under the Safe Drinking Water Act or state regulations but are well above levels authoritative scientific studies have found to pose health risks.

67. Failure to disclose a substance contained within the product you make and sell, even if that substance shows up only sometimes in tests of the product, can have dire consequences for the consumer as well as the vendor. A Reuters report on December 14, 2018 revealed Johnson & Johnson knew for decades small amounts of asbestos, a known carcinogen, had been occasionally found in its talc and powder products, according to tests from the 1970s to the early 2000s — information it did not disclose to regulators or the public. Reuters reported that evidence showed that from at least 1971 to the early 2000s Johnson & Johnson's raw talc and finished powders sometimes tested positive for small amounts of asbestos, and that company executives, mine managers, scientists, doctors and lawyers fretted over the problem and how to address it while failing to disclose it to regulators or the public. Does American Water withhold from its water quality reports data from contaminations that occur due to backflow or negligent flushing?

68. Johnson & Johnson's selective use of test results figured in a New Jersey judge's decision in 2018 to affirm the first verdict against the company in a case claiming asbestos in Johnson & Johnson products caused cancer. "Providing the FDA favorable results showing no asbestos and withholding or failing to provide unfavorable results, which show asbestos, is a form of a

misrepresentation by omission," Middlesex County Superior Court Judge Ana Viscomi said in her June ruling. Has American Water withheld unfavorable sampling results from the public and regulators based upon where they came from in a water distribution system?

SECOND CAUSE OF ACTION
BREACH OF CONTRACT
WATER QUALITY

69. Plaintiff incorporates herein paragraphs 1-70.

70. Defendant Pennsylvania-American Water Company provides drinking water to Plaintiff's home in exchange for a monthly fee. Plaintiff set up an account at some point with PA American Water and entered into a contract still in the possession of Pennsylvania-American Water Company.

71. American Water annually publishes a water quality report for each water distribution system it operates in the Unites States.

72. American Water states in its water quality reports that it is disclosing "exactly what was detected and how much of each substance was present in the water" or uses similar language that explicitly states American Water is disclosing all contaminants known to be in a water distribution system when it is only reporting regulated contaminants detected in the water coming out of a treatment facility.

73. The 2018 Royersford Water Quality Report stated early in the report that; "This edition covers all testing completed from January through December 2018." Statements like this routinely put in water quality reports published by American Water lead its customers to believe American Water truly intends to disclose "exactly what was detected and how much of each substance was present in the water." Failing to inform American Water customers of regulated

contaminants known to be in their tap water is a breach of contract. Failing to inform American Water customers of regulated contaminants known to be in their tap water while declaring the water to be "safe" is also a breach of contract.

74. The 2018 Royersford Water Quality Report failed to disclose the existence of tetracholorethylene in Plaintiff's drinking water in 2018. By stating in reports such as the 2018 Royersford Water Quality Report that PA American Water was disclosing "exactly what was detected and how much of each substance was present in the water" while withholding information from said report about the existence or extent of one or more contaminants detected from "all testing completed from January through December 2018," PA American Water breached its contracts with residential consumers on the Royersford system.

75. Discovery will uncover other instances when American Water failed to disclose in their water quality reports other contaminants, or the true level of various contaminants in the water distribution system that were reported. Thus the water American Water delivered to its residential customers whose water quality reports lacked full disclosure were sold water that was not of the quality described in the applicable water quality report. Plaintiff and members of each class have been damaged by Defendants' failure to provide safe water to their homes and failure to provide all the information they possessed about contaminants after promising to do so.

THIRD CAUSE OF ACTION
NEGLIGENCE
WATER QUALITY

76. Plaintiff incorporates herein paragraphs 1-75.

77. Defendant Pennsylvania-American Water Company provides drinking water to Plaintiff's home in exchange for a monthly fee.

78. It is possible the 2018 Royersford Water Quality Report failed to disclose the existence of tetracholorethylene in Plaintiff's drinking water in 2018 because PA American Water did not find any in any samples it took. It is possible that the 2018 Royersford Water Quality Report failed to disclose the existence of other contaminants in Plaintiff's drinking water in 2018 because PA American Water did not find any in any samples it took.

79. If PA American Water did not find any other contaminants besides those it identified in its water quality reports, it needs to do more sampling and was negligent for not doing so before proclaiming in its water quality reports that it was disclosing "exactly" contaminants were detected.

80. If PA American Water did not find any other contaminants besides those it identified in its water quality reports because it does not do any testing of the water once it is in the water distribution system, it is negligent for not having installed such a system or testing regimen years ago. If PA American Water's Cross Connection Department found other contaminants in the Royersford system besides those PA American Water identified in its water quality reports, it was negligent of PA American Water to not include such information in its water quality reports.

81. By stating in reports such as the 2018 Royersford Water Quality Report that PA American Water was disclosing "exactly what was detected and how much of each substance was present in the water," PA American Water was negligent for not including all contaminants found in the water when it was delivered to PA American Water customers on the Royersford system regardless of the reason for failure to disclose.

FOURTH CAUSE OF ACTION
BREACH OF CONTRACT
NEGLIGENT FLUSHING

83. Plaintiff incorporates herein paragraphs 1-82.

84. Defendant Pennsylvania American Water Company provides drinking water to Plaintiff's home in exchange for a monthly fee.

85. PA American Water breached that agreement when it forced water and sediment into Plaintiff's house on or about October 25, 2017 during or after a flushing.

86. American Water has breached its agreement with other customers by forcing water and sediment out of their toilets during or after a flushing without compensating those customers for the damage to their houses because it would rather they bear the cost of cleaning or fixing the damage done by American Water than for it to admit liability under such circumstances.

87. American Water could resolve this problem houses on either side of the hydrant (or other opening used when flushing a water distribution system) in cul-de-sacs experience when their water is supplied by a dead-end main (or other piping or equipment that is being improperly operated) but chooses to spend its capital improvement budget on other problems.

FIFTH CAUSE OF ACTION
NEGLIGENCE
NEGLIGENT FLUSHING

88. Plaintiff incorporates herein paragraphs 1-87.

89. Defendant Pennsylvania American Water Company provides drinking water to Plaintiff's home in exchange for a monthly fee. PA American Water owed Plaintiff a duty to not damage his house in the course of providing him with drinking water.

90. PA American Water breached duties it owed to Plaintiff when it forced water and sediment into Plaintiff's house on or about October 25, 2017 during or after a flushing.

91. American Water negligently maintained or operated the water distribution system which provides water to Plaintiff's house resulting in damage to his house. American Water has maintained or operated other water distribution systems where water and sediment entered the houses of other residential customers during or after a flushing due to its negligence.

92. Just as Southborough, Massachusetts samples water each year for tetrachloroethylene due to its use of vinyl-lined asbestos cement pipe and the City of Fairhaven tests for tetrachloroethylene due to its use of vinyl-lined water mains, if Defendants are using any vinyl-lined pipe or water mains, they would have to regularly test for tetrachloroethylene in their water distribution systems. Since there is no disclosure of any such testing in the American Water water quality reports for the Royersford system, the tetrachloroethylene found in Plaintiff's drinking water entered his water distribution system via backflow due to PA American Water's negligence.

CLASS ACTION ALLEGATIONS

93. Plaintiff brings this action on behalf of four separate classes, all pursuant to FED.R.CIV.P. 23(a) and 23(b)(3). The first class ("1st Class") is defined as:

> All American Water residential customers in the United States whose water quality reports stated they contained; "exactly what was detected and how much of each substance was present in the water" but a regulated contaminant(s) American Water detected or should have detected in the respective water distribution system was not disclosed in the applicable water quality report.

94. The second class ("2nd Class") is defined as:

> All American Water residential customers in the United States whose water quality reports stated they; "Included ... details about where your water comes from [and] what it contains..." but a regulated contaminant(s) American Water detected or should have detected in the respective water distribution system was not disclosed in the applicable water quality report.

95. The third class ("3rd Class") is defined as:

> All American Water residential customers in the United States whose water quality reports stated American Water; "ha[s] compiled a list in the table below showing what substances were detected in your drinking water during [calendar year]" but a regulated contaminant(s) American Water detected or should have detected in the respective water distribution system was not disclosed in the applicable water quality report.

96. The fourth class ("4th Class") is defined as:

> All American Water residential customers in the United States whose houses are located on either side of the hydrant (or other opening used when flushing a water distribution system) in cul-de-sacs that are serviced by dead-end mains (or other piping or equipment that is being improperly operated by American Water) such that water and sediment has come out of their toilets during or after a flushing which the customer informed American Water about but has not been compensated for.

97. Excluded from all classes are employees of American Water who were residential customers of American Water during any applicable class period.

98. Each class is so numerous that joinder of all members is not practicable. There are at least 40 individuals in each class because Defendants operate water distribution systems in multiple communities in about half the states in the United States. Each water distribution system has hundreds or thousands of residential customers on it; the Royersford system alone serves a population of over 40,000.

99. All of the classes are ascertainable. The 1st, 2nd and 3rd Classes are based solely on objective criteria:

> 1) the contaminants disclosed in the applicable water quality report; compared with
>
> 2) the sampling results from within the applicable water distribution system; and
>
> 3) the wording of water quality reports in use by American Water subsidiaries already shown to possess similar language.

If the contaminants detected in the sampling results from within the applicable water distribution system were not disclosed in the applicable water quality report whereas the applicable water quality report stated they would be then the residential customers on that water distribution system operated by American Water are entitled to damages.

100. The 4th Class is based solely on objective criteria- American Water residential customers in the United States whose;

1) houses are located on either side of the hydrant (or other opening used when flushing a water distribution system) in cul-de-sacs;

2) houses are serviced by dead-end mains (or other piping or equipment that is being improperly operated by American Water);

3) houses had water and sediment forced into them through their toilets;

4) during or after a flushing;

5) which the customer informed American Water about; and

6) who have not been compensated to date for the damage to their houses.

101. There are questions of law and fact common to the classes, which common questions predominate over any questions relating to individual class members. The predominant common questions include;

a. The similarity of the language used in water quality reports published by American Water;

b. Whether American Water knew of contaminants in water distribution systems it operated that were not included in a water quality report or otherwise publicly disclosed;

c. Whether American Water has breached its contracts with its residential customers by not publicly disclosing contaminants in their water distribution systems that American Water knew about;

d. Whether the language used in American Water water quality reports is deceptive if there are contaminants in water distribution systems operated by American Water which are not being disclosed in those reports;

e. If contaminants found in water distribution systems operated by American Water were not included in water quality reports as a result of negligence;

f. Where did the tetrachloroethylene in the Royersford system come from;

g. whether water and sediment that entered the homes of class members was due to negligent flushing of water distribution systems operated by American Water; and

h. why American Water does not compensate or clean up when water and sediment enters a residential customers' home due to negligent flushing of a water distribution system operated by American Water.

102. Plaintiff's claims are typical of the claims of the members of each of the classes. All are based on the same factual and legal theories.

103. Plaintiff will fairly and adequately represent the class members in each class. Plaintiff has retained counsel experienced in class action litigation.

104. A class action is superior for the fair and efficient adjudication of this matter, in that:

a. Individual actions are not economically feasible;

b. The members of each class are likely to be unaware American Water has breached its contracts with them by withholding information about some contaminants in their water; and

c. The members of each class are likely to be unaware they have been deceived by American Water; and

d. Class actions are the principal enforcement mechanism when consumer contracts are uniformly breached or defendants engage in a pattern of consumer fraud or negligence.

PRAYER FOR RELIEF

WHEREFORE, the Court should enter judgment in favor of Plaintiff and each of the classes and against Defendants for:

1) Statutory damages;
2) Actual damages;
2) Attorney's fees, litigation expenses and costs of suit; and
3) Such other and further relief as the Court deems proper.

Respectfully submitted by:

__/s/ Theodor Swansen___

Theodor Swansen
TASwansen LLC
PA bar ID No. 84712
NJ bar ID No. 29091999
1814 East Route 70, suite 350
Cherry Hill, NJ 08003
(215) 260-8469
SwansenLLC@gmail.com

October 25, 2019

JURY DEMAND

Plaintiff demands trial by jury.

s/ Theodor A. Swansen
Theodor A. Swansen